

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for)
Modification of Probation of:)

LEROY M. DEMERY,)

Petitioner.)

NO. L-24635

DECISION

The above-entitled petition came on regularly for hearing before a quorum of Panel No. 4 of the Medical Quality Review Committee, District #11, of the Division of Medical Quality.

The panel consisted of A. Zorel Paritzky, M.D.; Milo M. Webber, M.D.; Armando Figueroa, Pharm. D.; Althea Alexander, Public Member; and Emanuel Abrams, M.D., Chairperson. Ronald M. Gruen, an Administrative Law Judge of the Office of Administrative Hearings presided. Russell Lee, Deputy Attorney General, appeared and represented the Attorney General. Petitioner appeared in person and was represented by Charles Weedman, Esq.

Evidence having been introduced and the matter submitted, the panel finds the following facts:

I

Effective August 29, 1977, the certificate issued to petitioner to practice as a physician and surgeon was revoked, with the order of revocation stayed and petitioner placed on probation for a period of five (5) years subject to certain terms and conditions. Said discipline was imposed for numerous violations of then Section 2399.5 of the Business and Professions Code (prescribing drugs without prior examination and medical indication therefor).

In a related criminal matter in October, 1977, petitioner was convicted of 35 counts of violating Section 11154 of the Health and Safety Code and was ordered incarcerated in a correctional facility. He was incarcerated from January 16, 1978 until December 2, 1979, when he was released.

II

Petitioner filed the herein petition with the Division of Medical Quality dated March 23, 1981, for modification of probation. Specifically, petitioner seeks deletion of the first condition of two conditions precedent to the commencement of his probation, to wit:

"FIRSTLY:

Respondent shall first take a six month medical education curriculum course as recommended by the Los Angeles County Medical Society as approved by the Division of Medical Quality Assurance. Said course shall be supervised jointly by the Division of Medical Quality Assurance and said county medical society."

III

Petitioner contends that such condition precedent cannot be fulfilled since no such course has ever been available to him, and no such course will ever reasonably be available - all through no fault of petitioner.

Evidence adduced at the hearing herein indicated the availability of such a course in the form of an individualized program of medical education and supervision through the Charles R. Drew Postgraduate Medical School in Los Angeles. This course was made available to the petitioner in about December, 1980, at a cost of \$6,500, upon an initial deposit of \$1,500 and the balance payable at the conclusion of the training.

At the hearing herein, petitioner claimed that he is financially unable to afford the cost of the Drew program. By reason of his recent release from incarceration, he has no income or assets and by the terms of his probation, he is not permitted to practice medicine and, therefore, cannot earn the funds to defray the cost of such program.

IV

Petitioner did not establish that he is competent to practice medicine without first fulfilling such a condition (Finding of Fact I above), in a modified form. He has not demonstrated any change in his competency since the findings in the Decision of August 29, 1977. He has not practiced medicine since his incarceration in January, 1978, and has not demonstrated any educational experience associated with clinical exposure.

V

The chief medical consultant of the Division of Medical Quality, or his designee, shall recommend an appropriate educational

program to petitioner and shall take whatever steps are necessary to communicate such a recommendation to him.

The curriculum shall include remedial training in all areas of medical skills, with emphasis placed on the ethics and practice of prescribing drugs that have potential for abuse. The program shall be for a duration of six months.

VI

The Division of Medical Quality shall, after completion of the training on the part of the petitioner, provide a oral clinical examination, as more fully set forth in the second condition precedent to its order of August 29, 1977, placing petitioner on probation.

* * * * *

Pursuant to the foregoing findings of fact, the Panel makes the following determination of issues:

Pursuant to the provisions of Section 2307 of the Business and Professions Code, it is hereby determined that the petition to modify the terms and conditions of probation should be granted.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The petition of Leroy W. Demery, M.D. to modify the terms and conditions of probation is hereby granted. The terms and conditions of probation in the Decision of the Division of Medical Quality, effective August 29, 1977, is hereby modified by substituting the condition precedent set forth in Finding of Fact V above, for the one set forth in the original decision, as set forth in Finding of Fact II. Except as herein modified, such decision and all terms and conditions of probation pursuant thereto shall remain in full force and effect.

The Decision shall become effective on the 21st day of September, 1981.

IT IS SO ORDERED this 20th day of August, 1981.

By:



EMANUEL ABRAMS, M.D.
Chairperson, Panel No. 4
Medical Quality Review
Committee, District No. 11,
Division of Medical Quality

RMG:ss